

Award No. 360

Docket No. 341

2-MP-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist R. B. Wood and Helper E. Waymire, Nevada, Missouri, be compensated for time waiting, 4:30 P. M. to 11:45 P. M., at Pleasant Hill, Missouri.

EMPLOYES' STATEMENT OF FACTS: Date of March 17, 1938, Machinist R. B. Wood and Helper E. Waymire, were called at 8:00 A. M. and instructed to proceed to Pleasant Hill, Missouri, for the purpose of making repairs to locomotive 5536. These employees were instructed to make required repairs on this locomotive and return to Nevada, Missouri, on first available train. Repairs were completed at 4:30 P. M. First available train leaving Pleasant Hill for Nevada, Missouri, was 11:45 P. M. same date; consequently it was necessary for Wood and Waymire to wait at Pleasant Hill a total of 7 hours and 15 minutes for first available train.

POSITION OF EMPLOYES: It is our position that Wood and Waymire are, as provided in Rule 7 (a),

"Rule 7 (a). An employe regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight-time rate for all time waiting or traveling."

entitled to compensation for all time waiting at Pleasant Hill, Missouri.

Management declined compensation, basing their decision on provisions of Rule 7 (b) of wage agreement.

"Rule 7 (b). If during the time on road a man is relieved from duty for five (5) hours or more, such relief time will not be paid for provided that in no case shall he be paid for less than the eight (8) hours constituting his regular assignment at the home station (when such irregular service prevents the employe from making his regular daily hours at home station) and in addition thereto for the actual time working or traveling before or after his regular assigned hours at the home station. Where meals and lodging are not provided by the company, actual necessary expenses will be allowed."

- (b) That an employe does not possess the authority to release himself.
- (c) That their supervisor did not release them and they were not notified by any official who possessed proper authority that they were released.

NOTE:—Above quoted from General Chairman Keller's letter October 4, 1938, to Assistant General Manager Clements.

Our schedule rules specifically provide for the manner of compensating employes regularly assigned at a shop when called for emergency road work away from such shop, viz:

Be paid from time ordered to leave home station until returned for all time worked in accordance with the practice at home station and straight time rate for all time waiting or traveling except when relieved from duty for five hours or more such relief (waiting) time is not to be paid for.

In this instance the employes were relieved for a period in excess of five hours and such relief time is not properly payable under our schedule rules.

There is no rule nor practice thereunder to sustain the employes' contentions which should properly be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Rule 7 (a) provides as follows:

"An employe regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight-time rate for all time waiting or traveling."

The rule is clear. The term "worked" in the opinion of the Division is the equivalent of the phrase "while on duty."

The employe is working within the meaning of this rule while making necessary waits away from the home station.

The rule also provides expressly for payment for all time waiting or traveling.

The question whether five hours or more may be deducted from the employe's pay must be answered in the negative.

Rule 7 (b) does not permit relieving a man during his regular bulletin hours to equalize the time. See Award No. 161 in Docket No. 163 of this Division.

Such waiting time is not allowed by the carrier as a rest period, but is compelled by the circumstances.

Rule 7 (b) does not permit the carrier to avoid payment for waiting time of this kind while away from the home station.

The Rule 7 (b) was obviously for the purpose of requiring a rest period where necessary and for that purpose only.

The decision in this case is in accord with the prior decision, Award No. 154 in Docket No. 140 of this Division.

AWARD

Claim sustained.

Machinist R. B. Wood and Helper E. Waymire shall be compensated for time waiting, 4:30 P. M. to 11:40 P. M. at Pleasant Hill, Missouri.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1939.